IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:1-10-2005

CORAM:

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
and
THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

W.P.No.23408 of 2004
and
W.P.M.P.No.28349 of 2004

P.G.Narayanan,
Member - Rajya Sabha,
Leader of the All India
Anna Dravida Munnetra Kazhagam
Parliamentary Party,
226/275, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014. ..Petitioner

Vs.

1. Comptroller and Auditor General of India,
   10, Bahadur Shah Zafar Marg,
   New Delhi - 110 002.

2. Mr.T.Teethan,
   Accountant General (Audit) - Tamil Nadu,
   Office of the Accountant General,
   Anna Salai,
   Chennai-600 018. .. Respondents

Writ petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Quo Warranto against the second respondent as stated thereunder.

For Petitioner : Mr.N.Jothi,Assisted by
Mr.L.P.Shanmuga Sundaram
For Respondents : Mr.V.T.Gopalan,Addl. Solicitor
General of India for
Mr.P.Wilson,SCGSC.

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O R D E R

M.KARPAGAVINAYAGAM, J.

Mr.P.G.Narayanan, a Rajya Sabha Member and Leader of the All India Anna Diravida Munnetra Kazhagam Parliamentary Party, has filed this writ petition for issue of Quo Warranto as against Mr.T.Theethan, Accountant General (Audit), Tamil Nadu, Office of the Accountant General, Chennai, calling for him to cause to this Court how and under what authority he is holding the position of Accountant General (Audit), Tamil, Nadu, since he acted in a manner prejudicial to Chapter V of the Constitution of India against the elected Tamil Nadu State Government by holding a Press/Media Conference on 31.7.2004.

2. The gist of the plea made on behalf of the petitioner is as follows:

"Since the petitioner is interested in the public welfare of Tamil Nadu, he has got the locus standi to plead for the cause of the public and as such, he is well within his rights to file this public interest litigation seeking for the issuance of a Writ of Quo Warranto. The Comptroller and Auditor General of India, the first respondent herein under Article 151 of the Constitution has to submit his report relating to the accounts of the Union to the President of India and the report in relation to the accounts of a State to the respective Governor of the State. Mr.Theethan, Accountant General (Audit), Tamil Nadu, the second respondent herein is one of the subordinates to him as he is appointed by the Rules framed under Article 148(5) of the Constitution of India. These subordinates are to perform their duties to help the Comptroller and Auditor General of India with respect to the receipts and expenditure of the Union of India as well as the States. In short, the Comptroller and Auditor General of India alone is appointed by the President of India directly and he is the only person who prepares the reports of the accounts and places the same before the President and the Governors of the States respectively. Unfortunately, on 31.7.2004, he convened a Press/Media Conference and gave a news criticising the State Government as if the Chief Minister of the State was responsible for a loss of several crores during 2001-2002 and 2003-2004 facilitating an extraordinary vilification campaign launched by the Press to the political party. There is no need or any legal compulsion for the Accountant General (Audit), Tamil Nadu, the second respondent to hold any Press/Media Conference. The act of the second respondent also infringes the privilege of the Tamil Nadu Legislative Assembly. Since it is unlikely that the second respondent will mend his ways nor would the first respondent be

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emboldened to tune the second respondent who has done this deliberate act of convening the Press meeting and criticising the State Government and since his position has been misused by improper exercise of power, the petitioner is constrained to file this public interest litigation seeking for Quo Warranto against the second respondent."

3. The contents of the counter-affidavit filed by the second respondent is as follows:

"The Writ of Quo Warranto is not maintainable. The second respondent belongs to Indian Audit and Accounts Service. Throughout the affidavit filed by the petitioner, no dispute has been raised with reference to the legality of the order of appointment of the second respondent to the Office of the Accountant General. A Writ of Quo Warranto will not lie against the holder of a public office in the absence of the challenge to the appointment order in the matter of the discharge of his functions as such. The Comptroller and Auditor General of India, the first respondent is discharging his constitutional functions. In this case, the Audit Report prepared by the second respondent was sent to the first respondent, who in turn approved the same and put his seal. Thereafter, the said report was sent to the Governor of the Tamil Nadu State, who in turn caused the Report to be tabled before the Legislative Assembly. Accordingly, the report has been placed before the Assembly on 31.7.2004. Only thereafter, the Press Conference was held on 2.8.2004 as per the instructions given by the first respondent. The purpose of holding the Press Conference is to explain to the public the salient features of the said Audit Report. The second respondent convened the Press Conference and briefed the Media on the highlights of the "civil, revenue and commercial audit reports" placed before the Legislative Assembly. He has never exceeded his authority in going before the Press as regards the Audit Report placed before the Tamil Nadu Legislative Assembly. It is quite unfortunate that an officer who has done only his duty in accordance with the authoritative instructions from the first respondent who is the Constitutional Authority, is being abused in a vituperative language as if he made a press statement to satisfy some political persons who have instigated him to do so, which are all baseless and unwarranted. Therefore, the petition has to be dismissed with heavy costs."

4. The stand taken by the first respondent as found in the counter-affidavit separately filed on behalf of the first respondent is given below:

"The Audit Report relating to the State Government was prepared by the Accountant General of the concerned State and the first respondent after examination approved the same. Then, the

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said report was sent to the respective Governors of the States. Once the Audit Report was tabled in Legislative Assembly, it becomes a public document. Since the public are entitled to know the salient features of the said Audit Report, the instructions were given to the respective Accountant Generals of the States to explain the public through the Media. The audit objections are very important that the public of any State is entitled to know the contents and substance of such report. Only on the instructions given by the first respondent, the second respondent gave a Press briefing on 2.8.2004, after the Audit Report was tabled before the Assembly on 31.7.2004. As such, there is no impropriety or lack of authority on the part of the second respondent to have given a Press statement. After verification about the statement given by the second respondent in the Press briefing, the first respondent found that the second respondent has not exceeded his authority in any manner and his briefing was well within his limits."

5. On the basis of the above pleas, the respective counsel would make the submissions.

6. Mr.N.Jothi, the learned counsel for the petitioner would make the following contentions by way of oral and written submissions:

"The petition for Quo Warranto is maintainable, since it is not the mere qualification that matters at entry level but the continuity of office within the norms and bounds is also a matter of qualification. When the Constitutional norms are violated, the prayer for Quo Warranto is maintainable. In PEPSI FOODS LTD. AND ANOTHER v. SPECIAL JUDICIAL MAGISTRATE AND OTHERS (1998 (5) S.C.C.749), it is held that the nomenclature in which the petition has been filed is not relevant for rendition of justice and moulding of the prayers are permissible. What is complained herein is the dereliction of the statutory obligation on the part of the second respondent. Since the second respondent has committed a gross violation of the federal system of Constitution without any statutory provision authorized by law, the Writ of Quo Warranto is maintainable. Even assuming that the prayer is a hindrance for justice, the petitioner is always willing to mould it to suit the rendition of justice."

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7. The counsel for the petitioner would cite the following authorities:

1) INDER MOHAN v. UNION OF INDIA (A.I.R.1980Delhi 20);

2) ACCOUNTANT GENERAL v. S.DORAISWAMY (1981(4) S.C.C.93);

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3) SOLOMAN RAJU v. ACCOUNTANT GENERAL, A.P. (1983 LAB.I.C.230);

4) CENTRAL INLAND WATER TRANSPORT CORPN. v. BROJO NATH GANGULY (1986(3) S.C.C.156);

5) DELHI TRANSPORT CORPN. v. D.T.C. MAZDOOR CONGRESS (A.I.R.1991 S.C.101);

6) PONNUSAMY v. STATE OF TAMIL NADU, ETC. AND ANOTHER (1995 W.L.R.508);

7) PEPSI FOODS LTD. v. SPECIAL JUDICIAL MAGISTRATE (1998(5) S.C.C.749).

8. Mr.V.T.Gopalan, the learned Additional Solicitor General of India, appearing for the respondents, makes the following reply through oral and written submissions:

"As far as the first part of the prayer for the Writ of Quo Warranto against the second respondent to show cause on what authority he holds his office is concerned, the question of the validity of the initial appointment of the second respondent will have to be gone through in order to find out whether such appointment is in accordance with the statute or rules governing such appointment. It is not the case of the petitioner that the initial appointment of the second respondent is contrary to any rules. In the absence of the said fulfillment of the requirement, the Quo Warranto is not the appropriate relief and such an exercise cannot extend to the manner of discharge of the duties attached to the office to which a person is validly appointed. The petitioner's contention that this Court has got the power to mould the relief cannot be sustained, since such a prayer for moulding the relief cannot be asked before the petitioners set their house in order by amending the petition praying for appropriate relief. Even in the course of the discharge of his duties, the second respondent would not be said to be exceeded his powers or jurisdiction, since he convened the Press Meet only after the Audit Report placed before the Assembly and explained the salient features of the Audit Report to the public as per the instructions of the first respondent, the Constitutional Authority. The action of the second respondent in giving this Press Meet is not something which he did so, on his own account. Further, the disciplinary authority, viz., the first respondent after verification of the press statement, found nothing wrong in the conduct of the second respondent. Therefore, the writ petition both on law and on facts is not maintainable."

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9. The counsel for the respondents would cite the following authorities:

1) PRABOTH VERMA v. STATE OF U.P. (1984(4) S.C.C.251);
2) UNIVERSITY OF MYSORE v. GOVINDA RAO (A.I.R.1965 S.C.491);

3) STATEMAN (P) LTD. v. H.R. DEB (A.I.R.1968 S.C.1495);

4) B.R.KAPUR v. STATE OF T.N. (2001(7) S.C.C.231);

5) MOR MODERN COOP. TRANSPORT SOCIETY LTD. v. FINANCIAL COMMR. & SECY. TO GOVT.OF HARYANA(2002(6)S.C.C.269);

6) HIGH COURT OF GUJARAT v. GUJARAT KISHAN MAZDOOR PANCHAYAT (2003(4) S.C.C.712);

7) N.S.ZIAUDDEEN v. S.ASHOK KUMAR, PRINCIPAL SESSIONS JUDGE AND OTHERS (2002 Writ L.R.825);

8) PONNUSAMY v. STATE OF TAMIL NADU, ETC. AND ANOTHER (1995(2)L.W.349);
9) DINESH TRIVEDI v. UNION OF INDIA (1997(4)S.C.C.306);
10)RAMAMURTHY,K.,M.P. v. THE TAMIL NADU ELECTRICITY BOARD ETC. AND 9 OTHERS (1994 Writ L.R.268);

11)ASHOK KUMAR PANDEY v. STATE OF W.B. (2004(3) S.C.C.349).

10. We have carefully considered the submissions made by the respective counsel. We have also gone through the detailed written submissions.

11. At the outset, it shall be stated that the statement in the affidavit filed by the petitioner indicating as if the Press Conference was convened by the second respondent even before the Audit Report is placed before the Assembly and as such, the second respondent has committed breach of privilege of Tamil Nadu Legislative Assembly, is not factually correct.

12. On going through the counters and typed set, it is clear that the Audit Report has been placed by the Governor on receipt of the said report sent by the first respondent Comptroller and Auditor General of India, on 31.7.2004 and the Press Conference was convened by the second respondent on 2.8.2004. Therefore, it cannot be said that the procedures relating to the duties enjoined upon the respondents have not been followed.

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13. Even assuming that the second respondent has committed breach of privilege of Tamil Nadu Legislative Assembly by making a press statement, there is no reason as to why the petitioner or his Party has not requested the Speaker of the Assembly to take action for the alleged breach of privilege as against the second respondent. Admittedly, the petitioner without approaching the Speaker of the Assembly has rushed to this Court seeking for Quo Warranto.

14. Secondly, the petitioner has specifically stated in paragraph 31 of the affidavit as if the second respondent has convened a meeting without any authority of law nor with the permission of the first respondent who alone is the Constitutional authority. The relevant portion in paragraph 31 of the affidavit is as follows:

> "We the petitioners humbly feel it will be unlikely that the 2nd respondent will mend his ways nor the petitioners expect the 1st respondent would be emboldened to tune the 2nd respondent with the existing background of political thicket."

15. Through this statement, it is clear that the petitioner has rushed to this Court with impression that no purpose would be achieved by approaching the first respondent and complaining to him about the alleged act of giving a press statement criticizing the State Government as he would not be courageous enough to correct the second respondent who is backed by the political people. This conveys two things: (1) The second respondent has made a press statement without the knowledge or permission of the first respondent. (2) The second respondent has made a press statement only under political pressure.

16. On going through the counter of the first respondent, who is the Comptroller and Auditor General of India, it is clear that both the impressions gained by the petitioner, who approached this Court without availing of the other remedies, are imaginary and illusory.

17. Comptroller and Auditor General of India, the first respondent herein, the constitutional authority has categorically stated in his separate counter-affidavit that the specific instructions have been given by him to all the Accountant Generals (Audit) of the States to explain the salient features of the Audit Report to the Press to make the public know about the same after the Audit Report is placed before the respective Legislative Assemblies. He has further stated that he verified with the Press statement made by the second respondent herein and he did not find anything wrong in his Press statement.

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18. In the light of the above fact situation, we may look into the question of maintainability of the writ petition.

19. We would now refer to some of the decisions of the Supreme Court, which dealt with the principles to be taken into consideration for entertaining the writ petition for Quo Warranto.

20. In UNIVERSITY OF MYSORE v. GOVINDA RAO (A.I.R.1965 S.C.491(Constitutional Bench)), it is held as follows:

> "Before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

21. In STATESMAN (P) LTD. v. H.R. DEB (A.I.R.1968 S.C.1495 Constitutional Bench)), it is observed thus:

> "The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law."

22. In B.R.KAPOOR v. STATE OF T.N. (2001(7) S.C.C.231 C.B.), it is held as under:

> "A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. .... The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfil the required qualifications or suffers from any disqualification, which debars the person to hold such office. ..... The writ of 'quo warranto' is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have."

23. In HIGH COURT OF GUJARAT v. GUJARAT KISHAN MAZDOOR PANCHAYAT (2003(4) S.C.C.712), it is observed as follows:

> "The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. .... A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules."

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24. From the above observations made by the Supreme Court, it is evident that unless the initial appointment of the second respondent to the post he holds is opposed on the ground that it is contrary to any rules governing the appointment, the petitioner cannot make a prayer for the Writ of Quo Warranto asking the second respondent on what authority he holds the office.

25. The point urged by the counsel for the petitioner is the improper exercise of the power on the part of the second respondent in the discharge of his duties by making Press statement. As laid down by this Court in PONNUSAMY v. STATE OF TAMIL NADU, ETC. AND ANOTHER (1995 (2) L.W. 349), the Quo Warranto is not the appropriate relief when he seeks for grant of such prayer over the improper exercise of the power, as such an exercise cannot extend to the manner of discharge of the duties attached to the office to which a person is appointed.

26. In the light of the above legal situation, and realising the difficulty over the legal hurdle to maintain the Quo Warranto petition, the learned counsel has made an alternative submission that this Court has got the power to mould the relief so as to issue the appropriate writ in this behalf. We are unable to countenance this contention.

27. As laid down in PRABODH VERMA v. STATE OF U.P. (1984(4) S.C.C.251), this Court cannot be asked to mould the relief before the petitioner sets his house in order by amending the petition praying the proper reliefs. The relevant observation in the above decision is as follows:

> "The fact that the High Courts and a fortiori this Court have power to mould the reliefs to meet the requirements of each case does not mean that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the Court. An Advocate owes a duty to his client as well as to the court -- a duty to his client to give of his best to the case which he has undertaken to conduct for his client and a duty to assist the court to the utmost of his skill and ability in the proper and satisfactory administration of justice. In our system of administration of justice the courts have a right to receive assistance from the Bar and it is the duty of the advocate who drafts a writ petition or any other pleading to ask for appropriate reliefs. .... The High Court granted the proper relief by declaring that Ordinance to be void but it should have, before proceeding to hear the writ petition, instead that the

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petitioners should set their house in order by amending the petition and praying for proper reliefs."

So, the above observation would make it clear that this Court cannot be asked to draft the prayer by itself by moulding appropriate relief without any application by the petitioner requesting amendment of the prayer for proper relief.

28. As indicated above, the learned counsel for the petitioner would merely submit that he is willing to file an application for amendment of the prayer for the proper reliefs. However, no such application has been filed. The counsel for the petitioner neither in the written submission nor in the oral submission never mentioned about the nature of alternative relief which he seeks instead of the prayer made in the petition so as to be moulded.

29. Thus, the petitioner, who is a Member of Parliament, has chosen to rush to this Court by way of public interest litigation without verification of the real facts and without availing the other remedy, namely raising the breach of issue in the Assembly or questioning the authority by raising the issue in the Parliament or making a complaint to the first respondent, who is the disciplinary authority of the second respondent. In the above fact situation, it has to be held that the petitioner has not made out any case for entertaining this PIL and as such, the same is liable to be dismissed.

30. Before parting with this case, this Court is constrained to disclose our impressions formed in our mind with heavy heart:

(1) The drafting of the writ petition by the petitioner, who is a Rajya Sabha member and an Advocate, making untenable allegations against the second respondent herein in a vituperative language without any basis, does not sound well. This should have been avoided.

(2) Similarly, the statement made by the second respondent, the Accountant General (Audit), Tamil Nadu, to the Press in pursuance of the instruction given by the first respondent giving the particulars criticising the functioning of the Government in such a way which facilitated the opposite political parties to use the same as weapon to attack the Government does not augur well. This also should have been avoided.

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31. While recording these impressions, we think it fit to dismiss the petition. Accordingly, the writ petition is dismissed. Consequently, W.P.M.P.No.28349 of 2004 is also dismissed. No costs.

mam

Sd/
Asst.Registrar

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Sub Asst.Registrar

Copy to:

1. The Comptroller and Auditor General of India,
   10, Bahadur Shah Zafar Marg,
   New Delhi - 110 002.

2. The Accountant General (Audit) - Tamil Nadu,
   Office of the Accountant General,
   Anna Salai,
   Chennai-600 018.

+ 1 cc to Mr.N.Jothi Advocate SR No.41127

+ 1 cc to Mr.P.Wilson, Advocate SR No.41119

AK(CO)
SR/17.10.2005

Order
in
W.P.No.23408/2004

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